IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1276 OF 2002

Smt. Kalpana Sudam Rengade, presently residing at Shripad Apartments, Ganesh Nagar, Road No.6, Sangli - 416 416. ... Petitioner

Versus

1. The State of Maharashtra, through the Additional Govt. Pleader, High Court, Mumbai.

2. Zilla Parishad, Sangli, through the Chief Executive Officer, Zilla Parishad, Sangli.

3. Shri Dnyandev Ramu Madke having his address at Zilla Parishad, Sangli.

4. Mr. Balu Nakoji Gabhale, At & Post : Phake Building, Katavale Galli, Jai Bhavani Chowk, Khanbhag, Sangli, Tal. Miraj, Dist. Sangli. ... Respondents

Mr. Sachin Manale h/f. Mr. S.S. Pakale for the petitioner.

Mr. R.D. Rane, A.G.P. for the respondents.

CORAM: V.G. PALSHIKAR &
SMT. RANJANA DESAI, JJ.

DATED: 19TH AUGUST, 2004.

JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. In this petition filed under Article 226 of the Constitution of India, the petitioner has, inter alia, prayed for declaration that the petitioner is senior to respondent 3 in the service of Zilla Parishad, Sangli

i.e. respondent 2 herein in the cadre of 'Assistant' as well as 'Senior Assistant' and that promotion order dated 28/6/2001 issued in favour of respondent 3 thereby promoting him to the post of 'Office Superintendent' be quashed. It is the case of the petitioner that some vacancies were available with respondent 2 to the post of 'Assistant' under reserved quota. Respondent 2 invited the list of eligible and qualified candidates from the various departments, including the Social Welfare Department, State of Maharashtra. The Social Welfare Department forwarded a list of qualified and eligible candidates to the District Selection Committee, Sangli, for conducting their selection test. The names of the petitioner and respondent 3 along with many others were forwarded to the District Selection Committee, Sangli. The District Selection Committee conducted the selection test and on the basis of individual performance of written as well as oral tests, prepared a ranking list dated 16/7/1994. According to the petitioner, in that list she was at sr.no.2 and respondent 3 was at sr.no.3. According to the petitioner, she is more meritorious than respondent 3.

2. It is further the case of the petitioner that on the basis of the said ranking list, respondent 2 issued the appointment orders in favour of the eligible and qualified candidates. Under the said order dated 16/7/1994, the petitioner and respondent 3 along with nine other candidates, were appointed to the said post.

According to the petitioner in the said order, it was mentioned that that the candidates had to report for work within 30 days from the receipt of the said order. The petitioner received the said order and she immediately reported for work on 28/7/1994. Respondent 3 reported for work on 27/7/1994.

3. According to the petitioner, if the candidates report for work on or before the time prescribed in the appointment order, then his/her seniority for that post is fixed on the basis of the ranking list. The petitioner contends that she was at sr.no.2 and respondent 3 was at sr.no.3 in the ranking list and, therefore, she is senior to respondent 3 and thus was entitled to get the seniority over respondent 3.

4. The grievance of the petitioner is that respondent 2 prepared a seniority list in which the petitioner was wrongly and erroneously shown at sr.no.390 and respondent 3 was shown at sr.no.388. This is contrary to the circular dated 17/7/1989 which provides that if the candidates report for work on or before the time prescribed in the appointment order then, his/her seniority is to be fixed on the basis of the ranking list.

5. Vide order dated 15/1/1998, the petitioner and respondent 3 were promoted to the post of 'Senior Assistant' on the basis of the seniority in 'Assistant'

cadre. In the said order, respondent 3 was shown at sr.no.2 and the petitioner was shown at sr.no.3. The grievance of the petitioner is that she was entitled to be placed at sr.no.2 instead of sr.no.3. She made representation voicing her grievances. However, respondent 2 declined to make any changes in the seniority list.

6. Against the backdrop of the above facts, the petitioner has approached this court.

7. Mr. Manale, the learned counsel for the petitioner reiterated the above submissions. Mr. Rane, the learned A.G.P. for the respondents on the other hand heavily relied on the affidavit filed by Mr. S.K. Jadhav, Law Officer, General Administration Department, Sangli Zilla Parishad i.e. respondent 2 and contended that the petition deserves to be dismissed.

8. From the affidavit of Mr. S.K. Jadhav, Law Officer, General Administration Department, Zilla Parishad, Sangli, it appears that in the temporary seniority list of Junior Assistants cadre working in the Zilla Parishad as on 1/1/1994 and 1/1/1995, respondent 3 is at sr.no.388 and the petitioner is at sr.no.390. It is stated that these seniority numbers are based on the candidate's date of joining service.

9. The Maharashtra Urban Services (Rules of Seniority)

Rules, 1982 are applicable to the Zilla Parishad employees. It is stated in the affidavit that as per paragraph 4(2)(a) thereof, in the cases of direct recruitments, the selection at one time, inter se seniority of the employees shall be determined on the basis of the preference given by the selection committee or on the basis of any other reason given by the competent authority. It is further clarified in the affidavit that the seniority list duly prepared by the competent authority on the basis of the candidate's date of joining service is correct and bonafide.

10. The affidavit further goes on to say that the temporary seniority list of the Senior Assistants was published on 8/2/1999. Thereafter, after considering the objections and suggestions, the said list of Senior Assistants for the year 1999 was finalised with due corrections. A copy of the said office order dated 3/5/1999 is annexed to the petition. It appears from the affidavit that on the basis of the previous ranking, the petitioner along with other employees were already promoted as Senior Assistants by order dated 15/1/1998. Moreover, in the year 2001, two posts of Office Superintendent were filled in from the requisite 7% reserved quota for scheduled tribes. According to the seniority list of the Senior Assistants as on 1/1/2000, respondent 3 is at sr.no.93 and petitioner is at sr.no.94. It appears that on the basis of the above seniority numbers as on 1/1/2000, respondent 3 ranks

above the petitioner and, therefore, he has been promoted to the post of Office Superintendent. In view of this affidavit, we find no substance in the petition. The petition is accordingly disposed of.

(V.G. PALSHIKAR, J.)

(SMT. RANJANA DESAI, J.)